

MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Full Sunset Review of
the Antidumping Duty Order on Certain Hot-Rolled Carbon Steel
Flat Products from the Netherlands; Preliminary Results

Summary

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the relevant issues upon which the Department of Commerce (the Department) received substantive responses and rebuttal comments from interested parties:

1. Legal authority to conduct sunset review;
2. The Corus Staal BV claim with regard to the Department's practice embodied in the Sunset Review Policy Bulletin;
3. Likelihood of the continuation or recurrence of dumping: non-~~de~~ minimis margins in administrative reviews;
4. Likelihood of the continuation or recurrence of dumping: significant decline in import volumes;
5. Magnitude of the margin likely to prevail: zeroing;
6. Magnitude of the margin likely to prevail: GalvPro LP;
7. Magnitude of the margin likely to prevail: duty absorption.

History of the Order

In the November 2, 2001, amended final determination of the antidumping duty investigation, covering the period October 1, 1999, through September 30, 2000, the Department determined the following weighted-average dumping margins:

Corus Staal BV	2.59 percent
All Others	2.59 percent

See Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 55637 (November 2, 2001).

The antidumping duty order was published on November 29, 2001 (see Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands, 66 FR 59565 (November 29, 2001)). Pursuant to remand determination, the Department amended the antidumping duty order to lift suspension of liquidation 180 days from the date of publication of the preliminary determination (October 30, 2001) and to resume collection of definitive duties on November 29, 2001, the date of publication of the antidumping duty order in the Federal Register (see Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands: Notice of Final Court Decision and Suspension of Liquidation, 68 FR 60912 (October 24, 2003); and Notice of Amended Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 68 FR 74214 (December 23, 2003)).

The Department has completed two administrative reviews on imports of certain hot-rolled carbon steel flat products from the Netherlands (see Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Amended Final Results of Antidumping Duty Administrative Review, 69 FR 43801 (July 22, 2004); and Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 70 FR 18366, (April 11, 2005)). A third administrative review was initiated, but subsequently was rescinded (see Notice of Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands, 70 FR 21738 (April 27, 2005)). An administrative review for the fourth review period (2004-2005) is currently ongoing, and the preliminary results of that review have been published (see Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 71 FR 71523 (December 11, 2006)). An administrative review for the fifth review period (2005-2006) has been initiated (see Initiation of Antidumping and Countervailing Duty Administrative Reviews, 71 FR 77720 (December 27, 2006)).

The following is a summary of the four administrative review periods referenced above, including calculated weighted-average margins where relevant:

May 3, 2001 - October 31, 2002
Corus Staal BV: 4.80 percent

November 1, 2002 - October 31, 2003
Corus Staal BV: 4.42 percent

November 1, 2003 - October 31, 2004
administrative review of Corus Staal BV rescinded

November 1, 2004 - October 31, 2005
administrative review of Corus Staal BV is ongoing

November 1, 2005 - October 31, 2006
administrative review of Corus Staal BV is ongoing

Background

On August 1, 2006, the Department published its notice of initiation of the first sunset review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands (see Initiation of Five-year ("Sunset") Reviews, 71 FR 43443 (August 1, 2006)). The Department received a Notice of Intent to Participate from Corus Staal BV ("Corus Staal") on August 8, 2006. The following domestic interested parties each submitted a Notice of Intent to Participate, all within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations, identifying themselves as interested parties under 771(9)(c) of the Tariff Act of 1930, as amended ("the Act"):

Nucor Corporation (August 10, 2006)
Gallatin Steel, IPSCO Steel, Inc., and Steel Dynamics, Inc. (August 15, 2006)
Mittal Steel USA (August 16, 2006)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and
Service Workers International Union, AFL-CIO-CLC (August 16, 2006)
United States Steel Corporation (August 16, 2006)

The Department received a complete and timely substantive response from certain domestic interested parties (United States Steel Corporation ("U.S. Steel"), Mittal Steel USA Inc., Nucor Corporation, Gallatin Steel Company, Steel Dynamics Inc., and IPSCO Steel Inc.) (Domestic Producers) on August 31, 2006, within the deadline specified under Section 351.218(d)(3)(i) of the Sunset Regulations. The Department also received a complete substantive response from Corus Staal on August 31, 2006. Corus Staal claimed interested party status as a foreign producer, under section 771(9)(A) of the Act, and 19 CFR 351.102(b).

On September 8, 2006, the Department received rebuttal comments from U.S. Steel and from Corus Staal.

On September 20, 2006, the Department determined that domestic parties' and respondents' August 31, 2006, submissions constituted adequate responses to the notice of initiation, in

accordance with section 351.218(e)(1)(ii) of the Department's regulations. See the September 20, 2006, memorandum from Robert James to Richard Weible entitled "Sunset Review of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Adequacy of Domestic and Respondent Interested Party Responses to the Notice of Initiation." As a result, the Department determined, in accordance with section 351.218(e)(3) of the Sunset Regulations, to conduct a full (240 day) review.

The Department extended the deadlines for the preliminary results of this review and the final results of this review to February 12, 2007, and June 22, 2007, respectively. See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Extension of Time Limits for Preliminary and Final Results of Full Five-Year ("Sunset") Review of Antidumping Duty Order, 71 FR 67854 (November 24, 2006).

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping. In this case, the Department considered the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of certain hot-rolled carbon steel flat products from the Netherlands for the period before and the period after the issuance of the antidumping duty order.¹ In considering these data, the Department finds the following indicative of the likely continuation or recurrence of dumping: whether dumping continued at any level above de minimis after the issuance of the antidumping duty order; whether the imports ceased after the issuance of the order; and whether dumping was eliminated and import volumes declined significantly after the issuance of the order. In addition, pursuant to section 752(c)(2) of the Act, the Department considered whether good cause to consider other price, cost, market or other economic factors was shown in this case.

The Department found that dumping of the subject merchandise continued since the issuance of the antidumping duty order. The Department also found that imports of the subject merchandise declined significantly after the issuance of the order.

1. Legal authority to conduct sunset review

¹ The antidumping duty order was issued November 29, 2001, and the suspension of liquidation ensued on May 3, 2001 (the date of the publication of the preliminary results of the less-than-fair-value investigation). Corus Staal and domestic producers both presented data analysis based upon public U.S. Bureau of the Census import data, under the assumption that Corus Staal accounted for all exports of subject merchandise that entered the United States. The Department's analysis of non-public entry-specific information, available via the U.S. Customs and Border Protection ACS system, determined that Corus Staal has in fact accounted for virtually all such exports (see the September 20, 2006, memorandum from Robert James to Richard Weible entitled "Sunset Review of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Adequacy of Domestic and Respondent Interested Party Responses to the Notice of Initiation"). Consequently, use of the public U.S. Bureau of the Census aggregate data is reasonable for analyzing the general trend of import levels with respect to Corus Staal.

Corus Staal's Substantive Response:

Corus Staal claims that because a valid antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands no longer exists (and, indeed, never existed), there is no legal authority for the Department to conduct this sunset review and, therefore, it should be terminated and the order revoked.

Corus Staal states that the World Trade Organization determined that there has been no valid finding of dumping with respect to the subject merchandise, citing to the World Trade Organization dispute in United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DS294, which resulted in a report by the World Trade Organization Panel on October 31, 2005, and by the World Trade Organization Appellate Body on April 18, 2006 (US - Zeroing (EC)). Corus Staal states that the World Trade Organization panel and Appellate Body found the investigation underlying the antidumping duty order, as well as each subsequent administrative review under the order, to be based upon a margin calculation methodology – zeroing – that is inconsistent with U.S. obligations under the World Trade Organization Antidumping Agreement.

Corus Staal states that the United States expressed its understanding of the World Trade Organization determination in U.S. Statement at the WTO Dispute Settlement Body Meeting, Press Release of the U.S. Mission to the United Nations in Geneva at 1 (May 30, 2006) and in US - Zeroing (EC), Communication by the United States WT/DS294/18 at paragraph 12 (June 19, 2006). Corus Staal asserts that the United States committed to implement the directives of the World Trade Organization on this matter by April 9, 2007, citing US - Zeroing (EC), Agreement under Article 21.3(b) of the DSU, WT/DS294/19 (August 1, 2006). Corus Staal claims that the United States has acknowledged that zeroing is impermissible in any antidumping duty margin computation methodology, and that it has been uniformly acknowledged that had the Department not zeroed in the investigation, Corus Staal would have had an overall negative dumping margin, which would have prevented the issuance of the order underlying this review.

Corus Staal concludes that prior to the initiation of this sunset review in August 2006, the United States had agreed to a decision which found invalid both the order upon which this review is based and the authority of the Department to conduct this review. Corus Staal states that if the Department continues to conduct this sunset review, it will be in breach of its World Trade Organization obligations.

Corus Staal notes further that even if the initiation of this sunset review is deemed valid because the order has not yet been revoked, the order itself will cease to be validly issued by no later than April 2007, as a matter of both U.S. law and international law, and that given the future-oriented thrust of a sunset review, the Department must take this fact into account and terminate this review.

U.S. Steel's Rebuttal

U.S. Steel states that neither the World Trade Organization Panel nor the Appellate Body found that there had been no valid finding of dumping with respect to subject merchandise, or that the antidumping duty order on such merchandise was invalid. U.S. Steel also states that neither the World Trade Organization Panel nor the Appellate Body instructed the Department to revoke the order. Rather, the decision pertained to the Department's use of zeroing.

With respect to zeroing, U.S. Steel states that the World Trade Organization decision may not be implemented because to do so would be in violation of U.S. law. U.S. Steel argues that even if the World Trade Organization decision could be implemented under U.S. law, it need not be implemented, and zeroing has been upheld repeatedly by U.S. courts as a reasonable interpretation of the statute, and cites various decisions in support of this. U.S. Steel points out that decisions issued by World Trade Organization panels and the Appellate Body have no power to change U.S. law or to order such a change, and that the Congress and the Administration may decide not to implement an adverse World Trade Organization decision at all. Consequently, U.S. Steel argues, the Department is not required to eliminate zeroing.

Department's Position

The Department published an antidumping duty order on Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands on November 29, 2001 (see Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands, 66 FR 59565 (November 29, 2001)). The Department has never revoked that order. As such, it remains in effect and is valid under U.S. law.

With respect to US - Zeroing (EC), the Department recently announced that it was modifying its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. 71 FR at 77724. In addition, the United States has not yet gone through the statutorily mandated process of determining how to implement the report with respect to the specific administrative reviews that were subject to the US - Zeroing (EC) dispute. See 19 U.S.C. 3538.

In accordance with the requirements of section 751(c)(1) of the Act and 19 C.F.R. 351.218(c), the Department initiated this sunset review on August 1, 2006. The Department will continue to conduct this sunset review according to the requirements of U.S. law and Department regulations.

2. The Corus Staal claim with regard to the Department's practice embodied in the Sunset Review Policy Bulletin

Corus Staal's Substantive Response:

The Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when one of the following conditions exist:

- a) dumping continued at any level above de minimis after the issuance of the order;
- b) imports of the subject merchandise ceased after issuance of the order; or
- c) dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes for the subject merchandise declined significantly.

See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998).

Corus Staal argues that a recent decision by the Court of International Trade ("CIT") prohibits the Department from relying on presumptions in sunset reviews in order to find a likelihood of continuation or recurrence of dumping. Corus Staal cites Dillinger v. United States, 193 F. Supp. 2d 1339 (Court of International Trade 2002) as finding that the Department may not merely rely on the original dumping margin to establish a likelihood of continuation or recurrence of dumping.

Corus Staal also argues that recent decisions by the World Trade Organization prohibit the Department from relying on presumptions in sunset reviews in order to find a likelihood of continuation or recurrence of dumping. Specifically, Corus Staal cites:

United States - Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods From Mexico, WT/DS282/R at paragraph 8.1 (Panel Report June 20, 2005) as finding that the Department's reliance on the factors listed in Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin improperly establish an irrebutable presumption of continuation or recurrence of dumping in the absence of an order.

United States - Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina, WT/DS268/AB/R (AB Report November 29, 2004) as finding that Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, including its presumptions, can be challenged as a WTO-inconsistent measure.

United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R (AB Report December 15, 2003), in which the Appellate Body stated:

- 1) they "believe that a firm evidentiary foundation is required in each case for a proper determination under Article 11.3 of the likelihood of continuation

or recurrence of dumping,” and that “{s}uch a determination cannot be based solely on the mechanistic application of presumptions....” (at paragraph 178);

- 2) several concerns regarding Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, including the presumptions found therein, but lacked relevant facts to determine if the policies were inconsistent with the World Trade Organization (no paragraph cited);
- 3) Article 11.3 suggests to them that authorities must conduct a rigorous examination in a sunset review before the exception (namely, the continuation of the duty) can apply, and it appears that the drafters of the Anti-Dumping Agreement saw the sunset review as a rigorous process because a sunset review can take up to one year, involving a number of procedural steps, and requiring an appropriate degree of diligence on the part of the national authorities (at paragraph 113); and
- 4) the text of Article 11.3 contains an obligation to “determine” likelihood of continuation or recurrence of dumping and injury, and that while the text does not provide explicit guidance regarding the meaning of the term “determine,” the ordinary meaning of the term precludes an investigating authority from simply assuming that likelihood exists, and such a determination of likelihood should be on the basis of positive evidence constituting a sufficient factual basis for drawing reasoned and adequate conclusions in this regard (at paragraphs 114-115).

U.S. Steel’s Rebuttal

U.S. Steel argues that Dillinger v. United States involved a countervailing duty order, not an antidumping duty order, and involved certain factors that are unique to countervailing duty cases, such as the impact of amortization of the benefits from certain subsidies and evidence on the record regarding changes in ownership of certain companies. Even if one assumed that this decision pertains to sunset reviews of antidumping duty orders, U.S. Steel argues, in this case the original dumping margin need not and should not be relied upon to establish likelihood, as Corus Staal had non-de minimis weighted-average margins in both of the administrative reviews completed by the Department.

U.S. Steel notes that no World Trade Organization decision, including those cited by Corus Staal, has found Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin or the scenarios for finding likelihood of continuance or recurrence of dumping contained therein (e.g., continued dumping margins) to improperly establish a conclusive and irrebutable presumption of likelihood. U.S. Steel states that, on the contrary, the World Trade Organization Appellate Body has specifically rejected such

a finding and has upheld Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin in no less than three separate cases, citing:

Unites States - Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico, WT/DS282/AB/R (November 2, 2005) at paragraph 219(e);

Appellate Body Report in United States - Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina, WT/DS268/AB/R (AB Report November 29, 2004) at paragraph 365(b);

Appellate Body Report in United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R (AB Report December 15, 2003) at paragraphs 157, 209, 211, and 212(e).

Furthermore, U.S. Steel states that even Corus Staal itself (in footnote 14 of its Substantive Response) acknowledges that the World Trade Organization Appellate Body has upheld the Department's finding of likelihood in a case based on the presence of above de minimis dumping margins and a decline in the volume of imports after the issuance of the order, citing Appellate Body Report in United States - Corrosion-Resistant Steel from Japan at paragraphs 203-207. U.S. Steel notes that this fact pattern exists in this sunset review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands.

Department's Position

The Department found that Corus Staal continued to dump after the order went into effect (see issue number 3 below; see also Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Amended Final Results of Antidumping Duty Administrative Review, 69 FR 43801 (July 22, 2004); and Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; and Final Results of Antidumping Duty Administrative Review, 70 FR 18366, (April 11, 2005)). Also, the Department notes that imports declined significantly after the order went into effect (see issue number 4 below). Consistent with Department practice,² either one of these conclusions alone would be sufficient to find it likely that revocation of the order would lead to continuation or recurrence of dumping.

We agree with petitioners that the CIT decision referenced above did not pertain to sunset reviews of antidumping duty orders. We also agree with petitioners that the weighted-average dumping margin from the underlying less-than-fair-value investigation is not itself the basis for

² See, e.g., Oil Country Tubular Goods From Argentina, Italy, Japan, and Korea; Final Results of Five-Year ("Sunset") Reviews of Antidumping Duty Orders, 71 FR 59074 (October 6, 2006), and Silicomanganese from Brazil, Ukraine, and the People's Republic of China; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results, 71 FR 26927 (May 9, 2006)

determining the likelihood of continuation or recurrence of dumping in this or any other sunset review. We also agree with petitioners that the World Trade Organization has not ruled that the Department's criteria for determining likelihood must be abandoned (and has in fact upheld the use of these criteria), and that, even if the World Trade Organization had made such a determination, World Trade Organization determinations are not binding on U.S. Government agencies such as the Department.

3. Likelihood of the continuation or recurrence of dumping: non-de minimis margins in administrative reviews

Corus Staal's Substantive Response:

Corus Staal argues that while the Department calculated positive, non-de minimis weighted-average dumping margins for Corus Staal in the first and second administrative reviews, the weighted-average dumping margins for Corus Staal for each administrative review of Corus Staal that was not rescinded (*i.e.*, the completed first and second administrative reviews, and the ongoing fourth administrative review) are in each instance negative if the Department's margin calculation methodology does not zero out negative margins. Corus Staal reiterates that the Department cannot utilize zeroing in its methodology (*see* issue number 1 above), and argues therefore that the Department cannot point to non-de minimis margins from administrative reviews as a basis for concluding that dumping would be likely to continue or recur if the order were revoked.

Corus Staal also argues that the trend in average import unit values for imports of subject merchandise from the Netherlands during recent periods demonstrate that dumping is not likely to occur in the absence of an order. Specifically, Corus Staal states that average unit entered values during the fourth administrative review period (November 1, 2004, through October 31, 2005) and for June 2006 were nearly double those that prevailed during the investigation, and concludes that such "prices" are "dumping-safe" and "dispel any conclusions that there is a likelihood of dumping in the future."

U.S. Steel's Rebuttal

U.S. Steel states that in the only two administrative reviews completed since the issuance of the order, the Department determined that Corus Staal continued to dump the subject merchandise at above de minimis levels. U.S. Steel also points out that those two administrative reviews were not even amongst those that were challenged at the World Trade Organization, and that the World Trade Organization's determination on that issue was limited to those investigations and administrative reviews under challenge. In fact, the Department's use of zeroing in the first administrative review was upheld by both the CIT and the Court of Appeals for the Federal

Circuit, while its use of zeroing in the second administrative review was upheld by the CIT. U.S. Steel concludes that, based on the final results of the first and second administrative reviews, the Department can and should find that Corus Staal continued to dump the subject merchandise at an above de minimis level after the issuance of the order and that this, in turn, constitutes compelling evidence that dumping is likely to continue if the antidumping duty order is revoked.

With regard to Corus Staal's analysis of entered value data, U.S. Steel argues that such data have no bearing upon whether or not Corus Staal is or is not likely to dump in the future in the absence of an antidumping duty order, given the multitude of factors that enter the calculations of dumping margins. U.S. Steel states that Corus Staal's assertions regarding market conditions are refuted by other statements it made in its substantive response, noting that although Corus Staal asserted that the fourth administrative review import values were "dumping-safe," it also acknowledged that it expects a positive and non-de minimis weighted average margin for the fourth administrative review if zeroing is used.

Domestic Producers' Substantive Response

Domestic Producers note that weighted-average margins above de minimis were found for Corus Staal in the first two administrative reviews, and that the continued existence of such above de minimis margins, on its own, constitutes compelling evidence that dumping is likely to continue in the absence of the order.

Corus Staal's Rebuttal

Corus Staal states that the Department is prohibited by the decision of the WTO Appellate Body from relying on margins calculated in its administrative reviews because zeroing methodology was utilized in those administrative reviews.

Department's Position

In the first administrative review, Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Amended Final Results of Antidumping Duty Administrative Review, 69 FR 43801 (July 22, 2004), and the second administrative review, Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 70 FR 18366 (April 11, 2005), the Department calculated weighted average dumping margins that were above de minimis. The results of both reviews have been upheld by the courts. See Corus Staal BV v. United States, 387 F. Supp. 2d 1291 (CIT 2005), aff'd per curiam, 2006 U.S. App. LEXIS 15022 (Fed. Cir. June 13, 2006); Corus Staal v. United States, Ct. No. 05-00354, Slip Op. 06-112 (CIT July 25, 2006). We find that the continuation of dumping at above de minimis level after the imposition of the order is probative with respect to likelihood of continuation of dumping if the order were to be revoked.

Furthermore, Corus Staal stated the following at 16-17 of its Substantive Response, in the context of its argument that there is no basis for finding that revocation is likely to lead to the

continuation or recurrence of dumping:

In addition to the artificial market conditions resulting from the issuance of this order on November 29, 2001, the market was further disrupted by the Section 201 steel investigations. Those investigations were initiated one month into the first period of review. Temporary safeguard measures in the form of tariffs were imposed on March 20, 2002, about half-way through the first period of review and lasted until December 4, 2003, about one month into the third period of review, when the President terminated the temporary safeguard measures. Thus, at a minimum, these temporary safeguard measures affected Dutch imports during both the first and second periodic reviews.

During the period affected by the Section 201 safeguard cases, Corus Staal's margins were calculated at 4.80%, for the first review, dropping to 4.42% for the second review. During that same time period (2001-2002), the quantity of imports remained fairly constant. In the second review (2003), at the height of the Section 201 temporary measures and subject to remedial measures under two different trade statutes, Corus' imports dropped to their lowest levels in the post-order period. (See the 2003 trade data, which cover most of the second period of review.) With the cessation of the Section 201 tariffs at the end of 2003, Corus' margin in the third review dropped significantly, obviously below the calculated margin level in the second review.

Corus Staal thus suggests that the "disruptive" presence of the Section 201 tariffs on various hot-rolled carbon steel flat products contributed to the weighted-average margins of the first and second administrative reviews (which exceeded the weighted-average margin from the underlying less-than-fair-value investigation), and that the cessation of those Section 201 tariffs removed the disruption that contributed to those margins. The 30 percent tariff (later reduced to 24 percent) was not deducted from U.S. price in the first and second administrative reviews, so Corus Staal was found to be dumping even in the presence of those additional Section 201 tariffs. In other words, despite the presence of an additional 30 percent (later 24 percent) tariff on imports of its merchandise, Corus Staal's calculated weighted-average dumping margins actually increased. Rather than increase its U.S. prices relative to home market prices, Corus Staal continued to dump, and with overall higher margins.

With respect to the entered value data cited by Corus Staal, we agree with U.S. Steel that such data are not sufficient for determining whether or not Corus Staal has been dumping, nor are they an indication of whether or not Corus Staal would be likely to continue to dump in the absence of an order. The calculation of a weighted-average dumping margin does not utilize entered value data, and, even if such data were a reasonable proxy for U.S. prices, there are many facets of a dumping margin calculation beyond U.S. prices.

4. Likelihood of the continuation or recurrence of dumping: significant decline in import volumes

Corus Staal's Substantive Response

As noted in issue number 3 above, Corus Staal argues that administrative review margin calculations that did not employ zeroing would result in weighted-average margins of well below zero. Corus Staal notes that the Department's normal practice is to determine that revocation of the order is likely to lead to continuation or recurrence of dumping even if there were no positive non-de minimis margins if import volumes for the subject merchandise decline significantly. However, Corus Staal asserts that import volumes did not decline significantly during the five-year period of this sunset review.

Using public import data,³ Corus Staal states that its exports of subject merchandise from the Netherlands to the United States for the calendar years 2001 through 2005 were as follows (volume in metric tons; value in U.S. dollars):

<u>Year</u>	<u>Volume</u>	<u>Entered Value</u>
2001:	381,976	103,600,418
2002:	365,470	108,336,491
2003:	188,625	58,593,006
2004:	297,019	150,312,571
2005:	343,400	181,705,859

Corus Staal argues that since the imposition of the dumping order, its imports have remained relatively steady on a quantity basis or increased on a value basis, with the exception of the abnormal period during which the imports were subject to additional substantial Section 201 tariffs. Those Section 201 tariffs were imposed on March 20, 2002, and lasted through almost all of 2003, until lifted on December 4, 2003. Corus Staal states that while the volumes were fairly constant in 2001 and 2002, they dropped to their lowest levels in the post-order period in 2003, a year almost entirely affected by the Section 201 tariffs. Corus Staal notes that volumes and values have been rising since then, and that overall weighted-average margins for Corus Staal have been at the same time declining, meeting the standard that "declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked" (see Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (April 16, 1998)).

Corus Staal also notes the following import data, for each of the three most recent years, covering the two preceding fiscal quarters as of the month preceding the month in which the notice of initiation was published (i.e., the first and second quarters of the calendar years 2004, 2005, and

³ See the September 20, 2006, memorandum from Robert James to Richard Weible entitled "Sunset Review of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Adequacy of Domestic and Respondent Interested Party Responses to the Notice of Initiation," for analysis supporting the contention that such public import data may be a reasonable proxy for actual exports by Corus Staal. Domestic Producers also used such data in their substantive response.

2006) (volume in metric tons; value in U.S. dollars):

<u>Year/Quarters</u>	<u>Volume</u>	<u>Entered Value</u>
2004(1Q+2Q)	100,697	40,806,228
2005(1Q+2Q)	118,364	72,952,768
2006(1Q+2Q)	161,498	86,545,760

Corus Staal notes that the trend of increasing volumes and values is evident from these data as well.

U.S. Steel's Rebuttal

U.S. Steel states that Domestic Producers, in their substantive response, showed the significant decline in imports based on data covering periods corresponding to the administrative review period for the order (see below, under “Domestic Producers’ Substantive Response”).

U.S. Steel points out that the decline is also evident based on the calendar year data reported by Corus Staal in its August 31, 2006, substantive response (for years 2001-2005, see above, under “Corus Staal’s Substantive Response;” for pre-order year 1999 total of 460,501, see Corus Staal’s August 31, 2006 substantive response at 32). The calendar year level fell from 460,501 metric tons in 1999 to a low of 188,625 metric tons in 2003 before climbing somewhat to 343,400 metric tons in 2005, still well below the pre-initiation volume for 1999.

U.S. Steel points out that section 752(c)(1)(B) of the Act directs the Department to compare the volume of imports of subject merchandise before the issuance of the order to the volume of imports after the issuance of the order, and that this has been Department practice (see, e.g., Issues and Decision Memorandum accompanying Structural Steel Beams from Japan and South Korea: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders, 70 FR 53633 (September 9, 2005), at “Likelihood of Continuance or Recurrence of Dumping” section). U.S. Steel notes that the Department has recognized that it may not use a year in which the antidumping duty order was in effect as the benchmark year against which to measure the trend in imports because the data from such a year “cannot logically reflect import volumes or pricing practices likely to exist if the order were revoked” (see Issues and Decision Memorandum accompanying Pure Magnesium from Canada, Final Results of Full Sunset Review, 65 FR 41436 (July 5, 2000), at Comment 3 of the “Magnitude of the Margin Likely to Prevail” section). Even where imports increased within some portion of the period covered by the five-year review, the Department will find that dumping is likely to continue or recur if the import volumes are below the pre-order levels (see, e.g., Issues and Decision Memorandum accompanying Paper Clips from the People’s Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order, 70 FR 67433 (November 7, 2005), at “Likelihood of Continuance or Recurrence of Dumping” section).

Domestic Producers’ Substantive Response

Domestic Producers provided public import data for successive twelve month periods defined by

the recent periods of review, and extending back to prior to the order (data in short tons):

November 1999 - October 2000	589,318
November 2000 - October 2001	402,592
November 2001 - October 2002	401,987
November 2002 - October 2003	266,389
November 2003 - October 2004	292,476
November 2004 - October 2005	359,162

The first period above corresponds roughly with the period of investigation of the underlying less-than-fair-value investigation. The second period above spans a time prior to the suspension of liquidation through the month prior to the antidumping duty order. The third period above covers a significant portion of the first administrative review period. The fourth through sixth periods above correspond exactly with the three periods of review prior to the one for which an administrative review is ongoing. Domestic Producers state that this approach to analyzing distinct periods is consistent with Department practice (see Issues and Decision Memorandum accompanying Oil Country Tubular Goods (“OCTG”) from Mexico; Final Results of Sunset Review of Antidumping Duty Order, 66 FR 14131 (March 9, 2001), at “Likelihood of Continuance or Recurrence of Dumping” section). Domestic Producers note that these data demonstrate that, since the issuance of the order, shipments dropped to between 45 percent to 68 percent of the pre-initiation level since the issuance of the order.

Corus Staal’s Rebuttal

Corus Staal states that Domestic Producers disregard the effects of the Section 201 tariffs in their import volume analysis. Corus Staal states that even if the Department ignores the impact of the Section 201 tariffs, the value of imports from the Netherlands has increased significantly since the issuance of the order, and the decline in import volumes is not so great to be considered significant. Corus Staal points out that in cases where the Department found significant import declines, such as Paper Clips from the People’s Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order 70 FR 67433 (November 7, 2005), the decline from pre-order levels was 90 percent or even more.

Department’s Position

The data presented by both Corus Staal and Domestic Producers demonstrate that there was a significant decline in imports from the Netherlands attributed to Corus Staal between the period just prior to the order to the years of the order itself. For example, data presented by Corus Staal show a decline of almost 60 percent from calendar year 1999 to calendar year 2003. If the comparison is made between calendar year 2000 (the last year prior to the order) and calendar year 2003, the decline is approximately 63 percent.⁴ Even the 2005 total cited by Corus Staal is

⁴ The Department calculated a total of 508,310 metric tons for calendar year 2000, based upon public import data.

The source of the import statistics cited by interested parties and by the Department is the United States

approximately 25 percent below the 1999 level and about 33 percent below the 2000 level.

The import volume data Corus Staal provided for the first halves of calendar years 2004, 2005, and 2006 do not demonstrate the absence of a significant decline in shipments since the issuance of the order because, among other reasons, those data do not include any period prior to the issuance of the order.

Furthermore, Corus Staal has not explained why value levels should be considered in this analysis rather than volume levels, and there appears to be no basis for departing from the Department's normal practice of utilizing volume levels for analyzing whether or not shipments have declined significantly.

With respect to the Section 201 tariffs, Corus Staal has not demonstrated the extent to which those tariffs affected shipment levels. Furthermore, as noted, shipment levels for calendar years subsequent to the publication of the order but during which those Section 201 tariffs were not in effect (e.g., 2001, 2004, and 2005) were all lower than shipment levels of pre-order calendar years.

Finally, Corus Staal's reference to Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin with respect to "declining (or no) dumping margins" is not relevant, as Corus Staal had positive weighted-average dumping margins in the first and second administrative reviews, and those margins were actually greater than the margin from the underlying less-than-fair-value investigation.

5. Magnitude of the margin likely to prevail: zeroing

Corus Staal's Substantive Response

Corus Staal notes that, with regard to determining the magnitude of the likely margin of dumping if the order were revoked, the Department normally will select dumping margins determined in the original investigation or in a prior review, and that the Department will normally choose the investigation rate because that is the rate that reflects the behavior of exporters without the discipline of an antidumping duty order in place. See Uruguay Round Statement of Administrative Action ("URAA"), H.R. Doc. No. 103-316, Vol. 1 at 890-891 (1994), reprinted

International Trade Commission's Interactive Tariff and Trade DataWeb ([see http://dataweb.usitc.gov](http://dataweb.usitc.gov)). The Harmonized Tariff Schedule of the United States (HTSUS) numbers used for the analysis by the interested parties and the Department are all of those listed currently with the scope of the antidumping duty order (see, e.g., Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 70 FR 18366, 18367 (April 11, 2005)). As HTSUS numbers typically cannot be said to contain only subject merchandise, such an analysis is likely to somewhat overstate the actual imports of subject merchandise.

Note that the Department has already used this import tabulation methodology in this proceeding (see the September 20, 2006, memorandum from Robert James to Richard Weible entitled "Sunset Review of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Adequacy of Domestic and Respondent Interested Party Responses to the Notice of Initiation").

in U.S.C.C.A.N. 3773.

Corus Staal argues that in this sunset review the Department cannot simply rely on the margins calculated in the investigation or the subsequent periodic reviews in making its determination of the magnitude of dumping margin likely to prevail because those proceedings utilized methodology (i.e., zeroing) inconsistent with U.S. obligations under the World Trade Organization. Corus Staal states that the World Trade Organization Appellate Body has expressly stated that methodologies employed in one phase of a proceeding and found to be inconsistent with the World Trade Organization cannot taint the outcome of subsequent phases of the proceedings, such as sunset reviews. See United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R, Report of the Appellate Body, December 15, 2003. Corus Staal claims that the United States has agreed to change its policy on zeroing by April 2007 so that it is consistent with its World Trade Organization obligations, and that once zeroing is eliminated, the margins from the underlying investigation and the administrative reviews would be negative. Corus Staal concludes that the only lawful margins that can be forwarded to the United States International Trade Commission (“ITC”) as those likely to prevail would be negative (or zero) margins.

U.S. Steel’s Rebuttal

U.S. Steel states there is only one instance where the Department may report to the ITC a lower margin than that calculated in the underlying investigation. U.S. Steel states that the Department may report a more recently calculated weighted-average dumping margin that is lower than the investigation rate for a company where “dumping margins declined or dumping was eliminated after the issuance of the order...and import volumes remained steady or increased” (see Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18873 (April 16, 1998)), but neither of those conditions exist with respect to this sunset review. Furthermore, U.S. Steel notes that the World Trade Organization determinations are not binding on the Department, and do not require that the Department make any changes to Corus Staal’s margin in the underlying investigation. In fact, the Department may not recalculate Corus Staal’s dumping margin from the investigation to eliminate zeroing.

Domestic Producers’ Substantive Response

Domestic Producers suggest that the margin of 2.59 percent for Corus Staal and 2.59 percent for All Others be transmitted to the ITC as the margins likely to prevail if the order is revoked, with no reference to zeroing.

Corus Staal’s Rebuttal

Corus Staal repeats its objection to the margins from the underlying investigation being transmitted to the ITC, based in part on its argument that zeroing was unlawfully employed in the investigation.

Department's Position

Section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. The Department normally will report to the ITC as the margin likely to prevail the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. We preliminarily determine that it is appropriate to do so in this case, particularly since the Department's calculation of the weighted-average dumping margin in the investigation was upheld by the U.S. Court of Appeals for the Federal Circuit. See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1349 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (2006).

6. Magnitude of the margin likely to prevail: GalvPro LP

Corus Staal's Substantive Response

Corus Staal argues that in this sunset review the Department cannot simply rely on the margins calculated in the investigation or the subsequent periodic reviews in making its determination of the magnitude of dumping margin likely to prevail because, in addition to what it considers the unlawful use of zeroing in the underlying investigation, it contends that the calculations used in the investigation overstated the actual margins that could be expected going forward as a result of the inclusion of sales by a U.S. affiliate called GalvPro LP. Corus Staal states that it had argued the sales of damaged merchandise by GalvPro LP, a processor that Corus Staal jointly owned with a U.S. producer, had been outside the ordinary course of trade and, in any case, GalvPro LP had ceased production prior to the end of the period of investigation and had filed for bankruptcy. Corus Staal acknowledges that the CIT has upheld the inclusion of sales by GalvPro LP in the investigation margin calculations, but Corus Staal contends that the sales by GalvPro LP, which long ago ceased and which it states will not resume, have no relevance to the issues in this sunset review, which Corus Staal states focuses exclusively on the future. Corus Staal estimates that a recalculation of the margin from the investigation that excludes GalvPro LP sales and holds everything else constant results in a weighted-average margin that is de minimis.

U.S. Steel's Rebuttal

U.S. Steel states that there was no basis for exclusion of GalvPro LP sales from the calculation of Corus Staal's margin in the investigation, as confirmed by the CIT (see Corus Staal BV v. U.S. Department of Commerce, 259 F. Supp. 2d 1253, 1267-69 (Court of International Trade 2003), and that there is no basis for excluding them in the context of this sunset review.

Domestic Producers' Substantive Response

Domestic Producers suggest that the margin of 2.59 percent for Corus Staal and 2.59 percent for All Others be transmitted to the ITC as the margins likely to prevail if the order is revoked, and do not mention GalvPro LP sales.

Corus Staal's Rebuttal

Corus Staal reiterates that, for purposes of this sunset review and the magnitude of the margin likely to prevail, the investigation margin should be recalculated to exclude GalvPro sales.

Department's Position

It has not been the Department's policy to alter investigation margins to account for what may or may not have happened to respondents and/or the parties with which it dealt during the investigation period. Corus Staal has provided no legal or precedential basis for such manipulations, either in general or with respect to GalvPro LP sales. Consequently, for purposes of this sunset review and the rate the Department may forward to the ITC, the Department is not adjusting the investigation margin to remove the impact of GalvPro LP sales.

7. Magnitude of the margin likely to prevail: duty absorption

Corus Staal's Substantive Response

With respect to the magnitude of the margin likely to prevail if an order is revoked, the Department has stated the following:

where the Department has found duty absorption in the fourth administrative review of the order (or, for transition orders, in an administrative review initiated in 1998), the Department normally will -

- a) determine that a company's current dumping margin is not indicative of the margin likely to prevail if the order is revoked; and
- b) provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption. The Department normally will adjust a company's most recent margin to take into account its findings on duty absorption by increasing the margin by the amount of duty absorption on those sales for which the Department found duty absorption.

See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and

Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18874 (April 16, 1998).

In its Substantive Response discussion of the magnitude of the margin likely to prevail (see issues number 6 and number 7 above), Corus Staal made no explicit mention of duty absorption. Elsewhere in that submission, however, Corus Staal characterizes as unlawful the Department's initiation of inquiries into whether or not Corus Staal was absorbing antidumping duties assessed on entries of subject merchandise during the second and fourth administrative review periods. Corus Staal claims that the Department had no basis to initiate the absorption inquiries because Corus Staal is itself the importer, and that the inquiries themselves are unlawful because the inquiries start from the presumption the absorption is taking place (a presumption that Corus Staal states has not been rebutted in more than 10 years).

With regard to the second administrative review (in which, Corus Staal notes, the Department found duty absorption in its preliminary results, but made no reference to it in its final results), Corus Staal acknowledges that the CIT upheld the Department's determination that Corus Staal was absorbing duties, but notes that it intends to appeal that decision to the Court of Appeals for the Federal Circuit. Corus Staal notes that the Department has made no finding regarding duty absorption in the ongoing fourth administrative review, and has extended the time limit for the preliminary results in that review until November 30, 2006.

U.S. Steel's Rebuttal

U.S. Steel points out that even Corus Staal acknowledges that the CIT has upheld the Department's absorption ruling in the second administrative review, and that the Department has initiated a duty absorption inquiry in the fourth administrative review. U.S. Steel states that if the Department finds that Corus Staal has absorbed duties for the fourth administrative review period, this may impact the rate to be reported to the ITC as the dumping margin likely to prevail in the event of the revocation of the order, in accordance with stated Department practice. U.S. Steel states that Corus Staal has not provided any basis to do otherwise.

Domestic Producers' Substantive Response

Domestic Producers made no allusion to duty absorption in their substantive response. They noted simply that the margins from the investigation should be those determined likely to prevail if the order was revoked.

Corus Staal's Rebuttal

Corus Staal states that, to the extent that any of the margins calculated thus far are to be forwarded to the ITC, Corus Staal agrees with the Domestic Producers that a rate calculated from sales during the period of investigation is the most appropriate. As noted elsewhere, Corus Staal believes such an investigation rate should be one recalculated without implementation of a

zeroing methodology.

Department's Position

We agree with U.S. Steel that, if the Department were to determine that duty absorption took place for the fourth administrative review period, the Department should consider that when determining what should be transmitted to the ITC as the margins likely to prevail if the order is revoked. See, e.g., Cut-to-Length Carbon Steel Plate From Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom and Carbon Steel Plate From Taiwan; Second Five-year (Sunset) Reviews of Antidumping Duty Orders and Antidumping Finding; Final Results, 71 FR 11577, 11579 (March 8, 2006)). As the antidumping duty order in question was issued on or after January 1, 1995, the Department will consider the results of the duty absorption analysis in the fourth administrative review with respect to the magnitude of the margin likely to prevail if that administrative review is completed prior to the completion of this sunset review.

Preliminary Results of Sunset Review

We preliminarily determine that revocation of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands would be likely to lead to the continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters	Weighted-Average Margin (percent)
Corus Staal BV	2.59
All Others	2.59

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date